

41 and part 190 of this chapter, including any related definitions and cross-referenced sections.

[71 FR 1964, Jan. 12, 2006]

§ 38.3 Procedures for designation.

(a) *Application procedures. (1) Statutory (180-day) review procedures.* A board of trade desiring to be designated as a contract market shall file an application for designation with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(2) of this section, the Commission will review the application for designation as a contract market pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38.

(ii) The application must include the following:

(A) A copy of the applicant's rules (as defined in § 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure, including governance fitness information;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a des-

ignation criterion or core principle (final, executed copies of such documents must be submitted prior to designation);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 38.3(a)(1)(ii)(A) through (E) enable or empower the applicant to comply with each designation criterion and core principle (a regulatory chart); and

(G) To the extent that any of the items in § 38.3(a)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a designation criterion or a core principle is not self-evident, an explanation of how that item and the application satisfy the designation criteria or the core principles.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be designated as a contract market may request that its application be reviewed on an expedited basis and that the applicant be designated as a contract market not later than 90 days after the date of receipt of the application for designation by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 38.3(b), the Commission will designate the applicant as a contract market during the 90-day period. If deemed appropriate by the Commission, the designation may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38;

(ii) The application must include the items described in § 38.3(a)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during the 90-day review period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(2) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of section 6(a) of the Act, if it appears to the Commission that the application:

- (i) Is materially incomplete;
- (ii) Fails in form or substance to meet the requirements of this part;
- (iii) Raises novel or complex issues that require additional time for review; or
- (iv) Is amended or supplemented in a manner that is inconsistent with § 38.3(a)(2)(iii).

(2) The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(3) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 38.3(a)(2)(iii).

(c) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) or (a)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such

other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking designation under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for withdrawal of application for designation.* An applicant for designation may withdraw its application submitted pursuant to paragraph (a)(1) or (a)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for designation was pending with the Commission.

(f) *Request for vacation of designation.* A designated contract market may vacate its designation under section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Guidance for applicants.* Appendix A to this part provides guidance on how the criteria for designation under section 5(b) of the Act can be satisfied. Appendix B to this part provides guidance on how the core principles of section 5(d) of the Act can be satisfied.

[69 FR 67816, Nov. 22, 2004]

§ 38.4 Procedures for listing products and implementing contract market rules.

(a) *Request for Commission approval of rules and products.* (1) An applicant for